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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. **2012-105**

12 **ROBERT JOSEF DAPPRICH**
13 **P.O. Box 268**
Alameda, CA 94501
14 **Registered Nurse License No. 535699**
Public Health Nurse Certificate No. 64952

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about August 20, 1997, the Board of Registered Nursing issued Registered
23 Nurse License Number 535699 to Robert Josef Dapprich (Respondent). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought in this Accusation
25 and will expire on August 31, 2011, unless renewed.
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3. On or about April 19, 2002, the Board of Registered Nursing issued Public Health Nurse Certificate Number 64952 to Robert Josef Dapprich (Respondent). The Public Health Nurse Certificate was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on August 31, 2011, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

8. Section 118, subdivision (b), of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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1 exercised by a competent registered nurse. Such an extreme departure means the repeated failure
2 to provide nursing care as required or failure to provide care or to exercise ordinary precaution in
3 a single situation which the nurse knew, or should have known, could have jeopardized the
4 client's health or life."

5 12. Code section 4060 provides, in pertinent part:

6 "No person shall possess any controlled substance, except that furnished to a person upon
7 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
8 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
9 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, [or] a
10 physician assistant pursuant to Section 3502.1 . . ."

11 13. Health and Safety Code section 11173, subdivision (a), provides that "[no] person
12 shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the
13 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
14 or subterfuge; or (2) by the concealment of a material fact."

15 14. Section 11190, of the Health and Safety Code provides, in pertinent part that:

16 "(a) Every practitioner, other than a pharmacist, who prescribes or administers a controlled
17 substance classified in Schedule II shall make a record that, as to the transaction, shows all of the
18 following:

19 (1) The name and address of the patient.

20 (2) The date.

21 (3) The character, including the name and strength, and quantity of controlled substances
22 involved."

23 15. Section 11192, of the Health and Safety Code provides, in pertinent part that:

24 "In a prosecution for a violation of Section 11190, proof that a defendant received or has
25 had in his possession at any time a greater amount of controlled substances than is accounted for
26 by any record required by law or that the amount of controlled substances possessed by a
27 defendant is a lesser amount than is accounted for by any record required by law is prima facie
28 evidence of a violation of the section."

1 CONTROLLED SUBSTANCES/DANGEROUS DRUGS

2 16. Code section 4021 states:

3 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
4 11053) of Division 10 of the Health and Safety Code.”

5 17. Code section 4022 provides:

6 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in
7 humans or animals, and includes the following:

8 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
9 prescription,’ ‘Rx only’ or words of similar import.

10 “(b) Any device that bears the statement: ‘Caution: federal law restricts this device to sale
11 by or on the order of a _____,’ ‘Rx only,’ or words of similar import . . .

12 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
13 prescription or furnished pursuant to Section 4006.”

14 18. “Dilaudid,” also known by its trade name, Hydromorphone, is classified as a
15 Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision
16 (b)(1)(J), and a dangerous drug as defined by Code section 4022. It is indicated for the treatment
17 of moderate to severe pain.

18 COST RECOVERY

19 19. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licensee found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 FACTS

24 20. On or about January 5, 2010, Respondent was working as a registered nurse in the
25 Emergency Room (ER) at the University of California San Francisco (UCSF) Medical Center in
26 San Francisco, California. At approximately 12:18 p.m., Respondent removed two 0.6 milligram
27 carpjects of Dilaudid from the Pyxis for Patient 1. A carpject is a syringe device for the
28 administration of injectable fluid medication. The Pyxis machine is a security-controlled

1 medication dispensing machine. Employees gain access to the medications in the machine by
2 using their log-on name and the bio-metric fingerprint reader. At 12:20 p.m., Respondent
3 documented in the Pyxis that he wasted one 0.6 milligram carpject of Dilaudid. Despite
4 documenting in the Pyxis the wastage of 0.6 milligrams of the Dilaudid, Respondent documented
5 in Patient 1's medical record that he administered Dilaudid 1 milligram to Patient 1 at 11:55 a.m.

6 21. Furthermore, on or about January 5, 2010, at approximately 2:47 p.m., Respondent
7 removed from the Pyxis two 0.6 milligram carpjects of Dilaudid for Patient 1. Patient 1 had a
8 physician's order for 1 milligram of Dilaudid. Respondent failed to document in Patient 1's
9 medical record that he administered the Dilaudid, and he did not document wasting the drug. On
10 this same date, the nurse managers at UCSF Medical Center conducted a routine Pyxis audit and
11 discovered that Respondent removed the 1.2 milligrams Dilaudid from the Pyxis at 2:47 p.m., and
12 he failed to document administering or wasting it. Upon discovery of Respondent's
13 documentation discrepancy, the nurse managers questioned Respondent regarding his failure to
14 chart administering the Dilaudid in Patient 1's medical record. Respondent first stated that he did
15 administer the 1.2 milligrams Dilaudid to Patient 1, and he was planning to obtain a physician's
16 order to increase Patient 1's Dilaudid dosage from 1.0 milligrams to 1.2 milligrams. Upon further
17 questioning, Respondent stated that he actually administered 1.0 milligrams of Dilaudid to Patient
18 1, and then threw the remaining 0.2 milligrams Dilaudid in the garbage. Respondent did not have
19 anyone witness the alleged waste of the 0.2 milligrams of Dilaudid, as required by UCSF Medical
20 Center's Administrative Policy. Upon being confronted by the nurse managers and while in their
21 presence, Respondent documented in Patient 1's medical record that he administered 1.0
22 milligrams Dilaudid to Patient 1 at 2:50 p.m. Respondent also documented that Patient 1's
23 response to the Dilaudid was 2/10.

24 22. In addition, for several months prior to January 5, 2010, while Respondent was
25 working as a registered nurse in the ER at UCSF Medical Center, Respondent's co-workers
26 observed Respondent moving sharps containers to the soiled utility room of the emergency
27 department. A sharps container is a container that is filled with used medical needles. The ER
28 nurse manager had specifically instructed all staff not to remove sharps containers for disposal

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2 because UCSF Medical Center had a contract with an outside company for pharmaceutical waste
3 and sharps disposal.

4 FIRST CAUSE FOR DISCIPLINE

5 (Unprofessional Conduct – Obtaining or Possessing Controlled Substances)
6 (Bus. & Prof. Code §§ 2761, subd. (a)(1), 2762, subd. (a), 4060)

7 23. Complainant realleges the allegations contained in paragraphs 20 and 21 above, and
8 incorporates them as if fully set forth.

9 24. Respondent has subjected his registered nurse license to disciplinary action under
10 Code section 2761, subdivision (a), as defined by Code section 2762, subdivision (a), in that he
11 unlawfully obtained controlled substances in violation of Code section 4060, as described in
12 paragraphs 20 and 21. The circumstances are as follows:

13 a. Respondent unlawfully obtained and possessed Dilaudid in violation of Code
14 section 4060.

15 b. Respondent obtained Dilaudid by fraud, deceit, misrepresentation, subterfuge,
16 or by the concealment of material facts, in violation of Health and Safety Code section 11173,
17 subdivision (a).

18 c. Respondent failed to make the proper record for Dilaudid, a Schedule II
19 controlled substance, in violation of Health and Safety Code section 11190, subdivision (a).

20 SECOND CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct – False, Grossly Incorrect or Inconsistent, or Unintelligible Entries)
22 (Bus. & Prof. Code §§ 2761, subd. (a), 2762, subd. (e))

23 25. Complainant realleges the allegations contained in paragraphs 20 and 21 above, and
24 incorporates them as if fully set forth.

25 26. Respondent has subjected his registered nurse license to disciplinary action under
26 Code section 2761, subdivision (a), as defined by Code section 2762, subdivision (e), in that
27 Respondent falsified or made grossly incorrect, grossly inconsistent, or unintelligible entries in a
28 hospital, patient, or other record pertaining to the controlled substance Dilaudid. The
circumstances of Respondent's conduct are set forth in paragraphs 20 and 21, above.

1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Gross Negligence in the Practice of Nursing)
3 (Bus. & Prof. Code § 2761, subd. (a)(1))

4 27. Complainant realleges the allegations contained in paragraphs 21 and 22 above, and
5 incorporates them as if fully set forth.

6 28. Respondent has subjected his registered nurse license to disciplinary action under
7 Code section 2761, subdivision (a)(1), in that he engaged in gross negligence through his extreme
8 departure from the standard of care which under similar circumstances would have been exercised
9 by a competent nurse within the meaning of California Code of Regulations, title 16, section
10 1442. The circumstances are set forth in paragraphs 21 and 22, above.

11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
13 Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

- 14 1. Revoking or suspending Registered Nurse License Number 535699, issued to Robert
15 Josef Dapprich;
16 2. Revoking or suspending Public Health Nurse Certificate Number 64952, issued to
17 Robert Josef Dapprich;
18 3. Ordering Robert Josef Dapprich to pay the Board of Registered Nursing the
19 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
20 Professions Code section 125.3; and
21 4. Taking such other and further action as deemed necessary and proper.

22 DATED: August 15, 2011

23 Louise R. Bailey
24 LOUISE R. BAILEY, M.ED., RN
25 Executive Officer
26 Board of Registered Nursing
27 Department of Consumer Affairs
28 State of California
Complainant

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